

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JENNIFER J. WATKINS

Claimant

VS.

HALLMARK CARDS, INC.

Respondent

AND

LIBERTY MUTUAL INSURANCE COMPANY

Insurance Carrier

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Docket No. 1,035,414

ORDER

Respondent and its insurance carrier (respondent) appealed the August 9, 2007, preliminary hearing Order for Medical Treatment entered by Administrative Law Judge Brad E. Avery.

ISSUES

Claimant alleges she injured her right shoulder while working for respondent from February 19 through March 6, 2007. In the August 9, 2007, Order, Judge Avery granted claimant's request for medical benefits. The Judge specifically found that claimant sustained an accidental injury that arose out of and in the course of her employment with respondent.

Respondent contends Judge Avery erred because he ignored an uncontradicted expert medical opinion that claimant's work could not have caused her rotator cuff tear. Moreover, respondent argues the Judge demonstrated bias and passion at the preliminary hearing. Moreover, respondent contends Dr. Roger W. Hood watched the videotapes of both jobs that claimant performed for respondent and concluded her injury was not work-related. In summary, respondent argues:

In this instance, Dr. Hood looked at the actual jobs that Ms. Watkins performed in the workplace. He stated that the jobs were repetitive and could affect the shoulder, but "could not" cause a rotator cuff tear. The Administrative Law Judge demonstrated bias and passion in his examination of the witness [claimant]. While Judge Avery's questioning may have proven that a shoulder injury could

occur from the repetitive work, the expert medical testimony is uncontroverted. That expert testimony should not be ignored and it is clear that the job duties of Ms. Watkins cannot cause a rotator cuff tear.¹

Consequently, respondent requests the Board to reverse the Order.

Conversely, claimant contends the Order should be affirmed. Claimant argues she first developed right shoulder symptoms in mid-February 2007 and those symptoms worsened as she continued to work for respondent through approximately March 6, 2007, when she notified respondent of her symptoms. Moreover, she argues the company physician, Dr. Wayne R. Tilson, concluded claimant's injury arose from her work activities after viewing a videotape of claimant's job. Responding to Dr. Hood's opinions, claimant argues the doctor's opinions are suspect as he was hired to provide an opinion after the company doctor had found claimant's injury related to her work. In addition, claimant points out Dr. Hood did not examine claimant, did not provide an opinion within a reasonable degree of medical certainty, and the doctor only "imagines" that her injury is not work-related.

The only issue before the Board on this appeal is whether claimant's right shoulder injury arose out of the work she performed for respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date and considering the parties' arguments, the undersigned Board Member finds and concludes the August 9, 2007, Order should be affirmed.

Claimant began working for respondent in August 2006. Respondent manufactures greetings cards and employed claimant as a press operator/packer. Claimant regularly worked at the Speed Queen press, where she would take the finished greeting cards from a table and place them in a cardboard box. The table could be adjusted to allow the workers to work at waist level, which was the desired height. For the most part, the only work claimant performed above her waist was reaching for empty cardboard boxes that were stacked nine or ten high.

Sometime in February 2007, claimant began experiencing discomfort or an aching sensation in her right shoulder. Claimant continued working for respondent and on March 6, 2007, after working on a cardboard fold press, she experienced severe pain in

¹ Respondent's Brief at 5 (filed Aug. 30, 2007).

her right shoulder. Before working for respondent, claimant had not experienced any shoulder problems.

On March 7, 2007, claimant reported her symptoms to her supervisor, who sent her to respondent's nurse's station. Claimant told the nurse that she was not aware of any specific incident when she would have injured her shoulder. But she also told the nurse that a lot of times she had noticed her shoulder hurting when she rolled over in bed.

The nurse placed claimant on light duty and scheduled her an appointment with Dr. Wayne R. Tilson, whom claimant saw on March 16, 2007. The doctor ordered an x-ray and MRI, and also restricted claimant's work activities to light duty.

Following the MRI, claimant had an appointment with Dr. Chris D. Fevurly, who ordered physical therapy. Dr. Fevurly noted in his April 2, 2007, office notes that claimant's job entailed prolonged forward reaching and overhead reaching with her right arm. The doctor also noted the MRI indicated a partial thickness tear of the supraspinatus tendon. In addition to the partial thickness tear, Dr. Fevurly also found claimant had mild subacromial subdeltoid bursitis. Dr. Fevurly's diagnosis was a partial thickness tear and right shoulder rotator cuff tendinopathy that had worsened over the last six weeks.

Despite the efforts of Dr. Tilson and Dr. Fevurly, claimant's symptoms did not resolve. Claimant next saw Dr. Roger W. Hood. Claimant believes this visit occurred sometime in June 2007 and, according to claimant, the doctor did not examine her but merely ordered another MRI.

The major dispute in this claim is whether claimant's work activities either injured or aggravated her right shoulder. At respondent's request, Dr. Tilson reviewed a video of claimant's packing job and indicated it was possible the work could cause a strain of the rotator cuff. In a May 18, 2007, letter to respondent's nurse, the doctor wrote in pertinent part:

You had asked me to review a video of the packager position and give an opinion as to whether the job functions viewed would put her at risk or cause rotator cuff tear. I reviewed her chart and reviewed the video. It appears that the majority of the work is done at the waist or slightly above waist level with cards although there are some times in which she reaches well above her head as she is somewhat short to move boxes that are quite light weight but well above her head to move boxes to bring them down to fill them. It is less likely but possible that this job could cause a strain of the rotator cuff.

In review of Ms. Watkins' chart she notes that she began to notice a slight ache and pain around the shoulder while working as a packager but on March 6, 2007, she was switched to a different job, which apparently had much more shoulder activity

and it was at that time that the pain became much worse and she actually had the exacerbation and much more limiting pain in the shoulder. I do not know exactly what job that is and [it] was apparently not on the video I viewed. It may be that that job had more risk for her. She states that she never had any shoulder problems before working at Hallmark, so it would appear that from the history given that this is work related.²

On the other hand, Dr. Hood expressed a contrary opinion. In the doctor's July 5, 2007, letter to the insurance carrier, the doctor wrote, in part:

I reviewed the CD that you sent me showing the job that she does at Hallmark Cards. It's hard for me to believe that anybody can injure their shoulder doing this job. I certainly don't think that she could sustain a rotator cuff tear doing this job. I would agree that there is some repetitive action with this that would effect the shoulder, but since it doesn't occur at shoulder height or above, I really don't see that there is a problem here with this job and I imagine that her pathology in the shoulder is not job related.³

Claimant testified how her symptoms progressively worsened as she worked and how she experienced a significant increase of pain on March 6, 2007, while working. Moreover, claimant also testified that she had not experienced any shoulder symptoms until February 2007. Although claimant's over-the-shoulder work was limited, she did have to reach overhead to obtain some of the cardboard boxes she used to pack the greeting cards. Moreover, Dr. Tilson indicated it appeared from claimant's history that her shoulder symptoms were work-related. And at this juncture, there is no evidence that raises any questions concerning claimant's credibility.

"In this jurisdiction it is not essential that the duration of disability or incapacity of a workman be established by medical testimony."⁴ "A workers compensation claimant's testimony alone is sufficient evidence of the claimant's physical condition."⁵

The Judge found it was more probably true than not that claimant injured her shoulder working for respondent. The undersigned agrees. Accordingly, the preliminary hearing Order should be affirmed.

² P.H. Trans., Cl. Ex. 1.

³ P.H. Trans., Resp. Ex. A.

⁴ *Hardman v. City of Iola*, 219 Kan. 840, 845, 549 P.2d 1013 (1976).

⁵ *Hanson v. Logan U.S.D.* 326, 28 Kan. App. 2d 92, Syl. ¶ 2, 11 P.3d 1184 (2000), *rev. denied* 270 Kan. 898 (2001).

By statute, preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.⁶ Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2006 Supp. 44-551(i)(2)(A), unlike appeals of final orders, which are considered by all five members of the Board.

WHEREFORE, the undersigned affirms the August 9, 2007, preliminary hearing Order for Medical Treatment entered by Administrative Law Judge Brad E. Avery.

IT IS SO ORDERED.

Dated this ____ day of October, 2007.

BOARD MEMBER

c: Chris Cowger, Attorney for Claimant
John David Jurcyk, Attorney for Respondent and its Insurance Carrier
Brad E. Avery, Administrative Law Judge

⁶ K.S.A. 44-534a.